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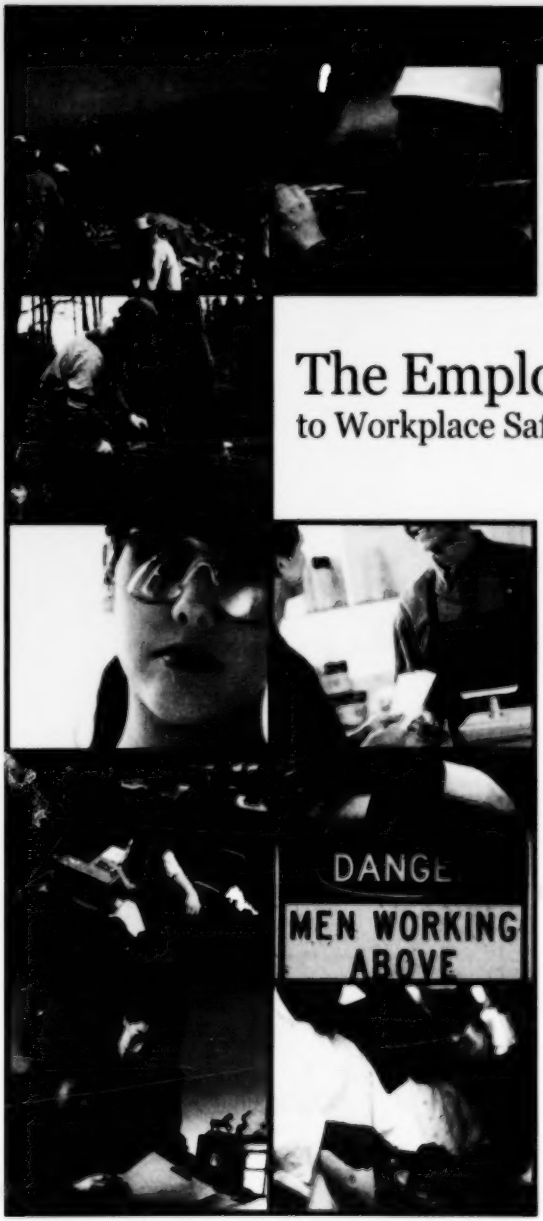
Ontario



The Employer's Guide
to Workplace Safety and Insurance

Expert. Confidential. Free.
www.employeradviser.ca

The Employer's Guide to Workplace Safety and Insurance

This guide is designed to help non-construction employers manage workplace safety and insurance and provides basic information and answers to frequently asked questions.

Construction employers can download ***The Construction Employer's Guide to Workplace Safety and Insurance*** from our website at: www.employeradviser.ca.

Since the workplace safety and insurance system is complex, you may have more questions than we could include in this guide. If you need help to apply this information to your particular situation please contact:

OFFICE OF THE EMPLOYER ADVISER (OEA)
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Toronto, Ontario M5S 1S4
416-327-0020
1-800-387-0774
Visit our website: www.employeradviser.ca
Send us your e-mail questions:
askoea@ontario.ca

The information in this guide is based on the *Workplace Safety and Insurance Act, 1997,* and subsequent amendments.

The Employer's Guide to Workplace Safety and Insurance

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OFFICE OF THE EMPLOYER ADVISER (OEA)

What is the OEA and how can it help me?

The Office of the Employer Adviser (OEA) is an independent agency of the Ontario Ministry of Labour (MOL) and has been helping Ontario employers since 1985. Our experts can help you manage workplace safety and insurance costs (formerly referred to as "workers' compensation") to give your business a competitive advantage. We provide expert advice to any size employer, and represent primarily employers who employ fewer than 100 employees. We also offer information on our website. We don't charge any fees for our services because we are funded through the premiums or administration fees you pay to the Workplace Safety and Insurance Board (WSIB).

What types of services does the OEA provide employers?

1. Advice

We have professional advisers experienced in all aspects of workplace safety and insurance answering your telephone queries in our advice centre. We help to resolve disputes early in the process and ensure you are treated fairly at all levels in the workplace safety and insurance system. We give you the information you need to get injured workers back to work safely. We provide you with practical advice on claims and revenue matters.

2. Representation

Primarily for employers who employ fewer than 100 workers, we provide representation at appeals at the WSIB and the Workplace Safety and Insurance Appeals Tribunal (WSIAT).

3. Education

We have publications designed to meet the day-to-day needs of employers regarding the workplace safety and insurance system. Visit our website at: www.employeradviser.ca.

How do I contact the OEA?

Telephone the OEA at 1-800-387-0774 or in Toronto at 416-327-0020, or send us your questions by e-mail at askoea@ontario.ca.

INTRODUCTION

What is workplace safety and insurance?

Workplace safety and insurance is a no-fault insurance system for work-related injuries and illnesses that is governed by the *Workplace Safety and Insurance Act, 1997* (WSIA). This means that no matter how careful the employer, or how careless the worker, if the injury is work-related the worker may be entitled to benefits.

The WSIB is responsible for administering the WSIA.

REGISTRATION

Do I need to register with the WSIB?

If you hire workers, including family members, or apprentices for your business you must register with the WSIB within 10 days of hiring your first worker if you are in a compulsorily covered industry.

Likewise, if you acquire any or all of an existing compulsorily covered business with employees, whether through purchase, lease, transfer or other means, you must register with the WSIB within 10 days of acquiring the business.

You should always check with the WSIB, preferably in writing, to determine whether or not you need to register.

Are there any precautions I should take when acquiring an existing business?

Yes. If you acquire an existing business you will inherit the seller's accident history and financial obligations, including any money owed to the WSIB. To protect yourself, you should get a purchase certificate from the WSIB. A purchase certificate is a document the WSIB will issue if the original employer's account is in good standing, on the date the business is sold.

If a purchase certificate is issued, the WSIB will not hold the purchaser liable for any amounts charged to the original owner's account, up to the date the business changed hands.

Either the original employer or the purchaser can request a purchase certificate, in writing or by telephone, by providing the vendor employer's name and WSIB account number(s), the purchaser's name and address, and the fax number and/or address to which the

certificate should be sent. The vendor employer needs to provide authorization to release its account status information before the certificate can be given to the purchaser.

For audit purposes, purchasers must keep a copy of any purchase certificate received. Both the purchaser and the vendor are required to keep a copy of any purchase certificate issued *directly* to them by the WSIB.

Do independent operators / contractors need to register?

If you have no employees, and meet the WSIB's criteria for independent operator (IO) status, you are not required to register with the WSIB. You should check with the WSIB, preferably in writing, to determine whether or not you need to register.

How do I register?

Registration forms are available on the WSIB's website at: www.wsib.on.ca. You can also call the WSIB at 1-800-387-0080 to have one sent to you. The WSIB will assign account and firm numbers to your company once you have been registered.

There currently are two types of registration processes depending on whether you are an employer, or an individual applying as an independent operator, a sole proprietor, a partner or an executive officer of a corporation.

1. Employer Registration

This process is for a business that hires one or more workers. Employers who are compulsorily covered under the WSIA must notify the WSIB within 10 days of hiring their first worker.

Employers who are not compulsorily covered, such as barbers and hair salons, membership organizations (i.e., labour organizations, professional associations, political organizations, etc.), and offices of lawyers, dentists, medical doctors and veterinarians, may apply for application coverage. Employers who subsequently want to cancel their application coverage must pay a departure fee.

2. Optional Insurance Request / Change

This is the voluntary registration process for IOs, sole proprietors, partners and executive officers of a corporation. WSIB coverage is

not automatically granted. The WSIB will decide whether an individual qualifies for optional insurance.

What is the penalty if I am required to register but don't?

You will be charged prior unpaid premiums, plus interest and penalties. Individuals may also be charged with an offence, and if found guilty may be fined up to $25,000 or sentenced to six months imprisonment or both for each offence. A corporation may be fined up to $100,000 for each offence.

COVERAGE

Who is covered by the WSIA?

Workers are covered by the WSIA. A "worker" includes anyone employed under a contract *of* service or apprenticeship with an employer carrying on a business listed in Schedule 1 or Schedule 2 of the WSIA. A worker performs work for an employer in return for wages or a salary. The employer has control over the work, as well as where, when and how it is done. A worker can be employed full-time, part-time or seasonally and can be:

- a learner
- a student
- a person the WSIB deems to be a worker and
- a pupil deemed to be a worker under the *Education Act*.

Domestic workers who are directly hired and paid by private households to work more than 24 hours a week for one family are also covered under the WSIA. This includes nannies, babysitters, nursemaids, housekeepers, gardeners, cooks, companions and handy persons.

Who is entitled to claim benefits under the WSIA?

Workers or their dependents can submit a claim for WSIB benefits if the worker suffers an injury, illness or death that arose out of and in the course of employment, and the following three conditions are met:

- the worker's employer is subject to compulsory coverage under the WSIA
- the individual is considered to be a worker under the WSIA (see above) and

- the injury happened in Ontario, or the criteria specified in ss. 18-20 of the WSIA are met if the injury happened outside of Ontario.

Which employers have mandatory WSIB coverage under the WSIA?

The WSIA establishes two categories of industries to which mandatory WSIB coverage applies – Schedule 1 and Schedule 2. Workers of employers listed in either one of these categories are entitled to claim WSIB benefits if they are injured on the job, develop a work-related illness or die, even if their employer has not registered with the WSIB.

a) Who are Schedule 1 employers?

Schedule 1 employers pay WSIB premiums and are subject to the collective liability provisions of the WSIA. The compulsorily covered activities in Schedule 1 are divided into nine industry classes under Ontario Regulation (O. Reg.) 175/98:

- forest products
- mining and related industries
- other primary industries
- manufacturing
- transportation and storage
- retail and wholesale trades
- construction
- government and related services and
- other services (including supplying labour, restaurants and hospitality).

b) Who are Schedule 2 employers?

Schedule 2 employers are self-insured. They pay the full amount of their WSIB claim costs plus an administration fee that is set annually by the WSIB. Schedule 2 industries are also listed in O. Reg. 175/98 and include:

- provincial and municipal governments
- Crown corporations
- telephone companies licensed by the federal government
- airlines and

- railways.

What industries or business activities are <u>not</u> covered by the WSIA?

There are over 100 industries that are omitted from mandatory coverage because they are not listed in either Schedule 1 or Schedule 2. These include:

- banks, insurance companies, trust companies and other financial institutions
- law firms
- real estate agencies
- business associations
- recreational and social clubs
- trade unions
- private schools and universities
- children's camps
- travel agencies and
- health clubs.

These employers can apply for "by application" coverage under Schedule 1. If the WSIB accepts their application, these by application employers are treated the same as Schedule 1 employers. Any application employers who subsequently want to cancel their application coverage must pay a departure fee.

Who is excluded from WSIB coverage?

There are also two groups of individuals who have been excluded from compulsory coverage under the WSIA.

The first group of individuals is excluded from the definition of a "worker" but can apply for voluntary WSIB coverage, also known as "optional insurance," if they are carrying on business in an industry included in Schedule 1 or Schedule 2. This includes:

- executive officers of a corporation
- IOs who operate a business, who do not employ any workers, and who have completed a WSIB independent operator questionnaire
- sole proprietors and
- partners in a business.

The second group of individuals who are completely excluded and may not apply for voluntary coverage includes:

- volunteers – except for volunteer fire and ambulance brigade workers, volunteer emergency workers, search and rescue volunteers, auxiliary police and workers classified as "learners" and
- casual workers – a person whose employment is "not for the purposes of the employer's industry."

How can I find out if my business is covered?

You are responsible for checking with the WSIB, preferably in writing, to find out if you are required to register your business.

You can find detailed information about the coverage status of all businesses and industries in Ontario by referring to the WSIB's *Employer Classification Manual* (ECM) at: www.wsib.on.ca. You can also call the OEA for help.

EMPLOYER COSTS

How much do I have to pay the WSIB?

What you pay to the WSIB depends on whether you are a Schedule 1 or a Schedule 2 employer.

The WSIB maintains an insurance fund that is made up of annual premiums paid by Schedule 1 employers. By contributing to the insurance fund, Schedule 1 employers have a collective liability system for their accident claim costs – they do not have the individual responsibility for paying for actual claim costs. An employer's premium payments are based on the WSIB's classification of the employer's business activity (which determines the premium rate) and the employer's total insurable payroll. The annual premium paid by an employer is equal to its annual insurable earnings (payroll costs), multiplied by the premium rate, and divided by 100.

$$\text{Premium} = \frac{\text{Annual Insurable Earnings} \times \text{Premium Rate}}{100}$$

The WSIB sets the premium rate for each rate group each fall, and announces the maximum insurable amount of workers' earnings each summer, for the following calendar year. Employers pay premiums only up to the insurable amount. The maximum insurable earnings ceiling for an individual worker in 2010 is $77,600.

Schedule 2 employers pay the full cost of accident claims filed by their workers, plus an administration fee. The 2010 provisional administration rate for provincially regulated employers is 21.65% and for federally regulated employers is 16.76%.

What additional costs could I incur?

The WSIB may levy penalties for various offences, including:

- failing to register your business within 10 days of hiring your first worker
- failing to report an accident
- not reporting, or incorrectly reporting, your premium information
- not submitting your payroll reconciliation statement by March 31st each year if your annual payroll is $300,000 or more
- underestimating your earnings
- knowingly making a false or misleading statement to the WSIB
- wilfully failing to inform the WSIB of a material change in circumstances and
- contravening rules regarding the disclosure of confidential information.

Individuals may be fined up to $25,000 and/or imprisoned for up to six months for each offence. Corporations are liable to a fine of up to $100,000 for each offence.

What are experience rating programs?

Experience rating programs are primarily intended to achieve greater insurance equity in premium pricing for Schedule 1 employers based on their accident and claim cost experience in comparison to the industry rate group average. Experience rating also plays a role in reducing accidents and occupational disease, and promoting early and safe return to work (RTW). Schedule 1 employers may receive a refund on their premiums by achieving these objectives. If these objectives are not met, Schedule 1 employers pay a surcharge on their premiums.

The WSIB may also apply a "Fatal Claim Premium Adjustment" to the accounts of Schedule 1 employers if a traumatic fatality occurs at their workplace. This policy applies to all decisions made on or after

March 10, 2008. The Fatal Claim Premium Adjustment may be appealed.

How many experience rating programs are there?

There are three types:

- Merit Adjusted Premium (MAP).
- New Experimental Experience Rating (NEER) and
- Council Amendment to Draft #7 (CAD-7).

Employers in Schedule 1 are grouped into one or more of these programs based on the size of their payroll and their business activity.

1. MAP

MAP is the merit incentive program for all employers, including construction employers, with annual premiums between $1,000 and $25,000 excluding any adjustment by any of the WSIB's experience rating programs. Once you qualify for MAP you will remain in MAP for at least 3 years, despite premium fluctuations below $1,000 and over $25,000.

MAP reviews the number of claims with more than $500 in costs over a three-year period. Claims over $500 are included in your accident record, while claims under $500 are not included. Employers who have no claims with costs over $500 during the period in review will receive a 5-10% discount off their premiums. Employers who have one or more claims with costs over $500 during the period in review will receive a premium increase of up to 50%. Any claim costing over $5,000 will result in an automatic 10% surcharge on the employer's premium rate, plus any other MAP adjustment.

MAP automatically excludes the costs of claims arising from the following long-latency illnesses from its calculations:

- Acquired Immune Deficiency Syndrome (AIDS)
- Carcinoma
- Chest diseases due to aluminium and cadium exposure
- Chronic noise exposure
- Chronic obstructive lung disease
- Pneumoconiosis due to asbestos, silica, talc hard metal (cobalt), and other mineral dust, and
- Scleroderma.

The rate group shares the costs of these claims.

A fatality claim will automatically result in a 25% surcharge on the employer's premium rate, plus any other MAP adjustment.

A MAP adjustment for a claim involving a third party is determined by pro-rating the claim costs and any special adjustments according to the percentage of liability of the parties involved.

2. NEER

NEER is the experience rating program for non-construction employers that pay annual premiums over $25,000. NEER compares the employer's actual claim costs over a three-year period to the expected costs for the size and type of business. If the actual claim costs are lower than expected, the employer is eligible for a refund. If the actual claim costs are higher than expected, the employer receives a surcharge.

NEER automatically excludes the costs of claims arising from the following long-latency illnesses from its calculations:

- Acquired Immune Deficiency Syndrome (AIDS)
- Carcinoma
- Chest diseases due to aluminium and cadium exposure
- Chronic noise exposure
- Chronic obstructive lung disease
- Pneumoconiosis due to asbestos, silica, talc hard metal (cobalt), and other mineral dust, and
- Scleroderma.

The rate group shares the costs of these claims.

To protect employers from unlimited claim costs, there is a limit on the maximum cost assessed for any one claim ("claim cost limit"), and also on the total amount assessed by NEER for all of your claims ("firm cost limit" or "organization cost limit"). The organization cost limit is four times the expected cost. The maximum surcharge is three times the maximum rebate. The claim cost limit is five times the maximum insurable earnings.

In the year a traumatic fatality occurs, a premium increase equivalent to the NEER refund an employer is entitled to receive is applied to the employer of the deceased worker – in effect eliminating the NEER rebate for that year.

3. CAD-7

CAD-7 is the experience rating program for construction employers that have annual premiums over $25,000. CAD-7 compares the employer's actual number (frequency) of claims over two years, and claim costs over five years, to the expected frequency of the rate group and costs associated with the size of the workforce.

How can I control the size of my rebate or surcharge?

The best way to control the size of your rebate or surcharge is to reduce claim frequency and claim costs through prevention, early and safe return to work, and cost relief measures. The most effective way to reduce claim frequency is through prevention, which can be as simple as complying with employer obligations under the *Occupational Health and Safety Act* (OHSA). Once an injury has occurred it is important to return the injured worker to work as quickly and safely as possible. More prevention assistance can be obtained from the Health and Safety Associations which are listed on the Partners section of the WSIB's website at: www.wsib.on.ca.

Second Injury and Enhancement Fund (SIEF), cost transfer and third party cost relief are three cost relief methods that Schedule 1 employers may use to reduce the cost of a claim. The WSIB either grants or denies cost relief based on the merits of each request.

SIEF transfers loss of earnings (LOE) benefits and health care costs from a Schedule 1 employer to the employer's rate group. Employers may receive SIEF when a worker's pre-existing condition or prior disability contributed to the work-related injury, or prolongs or enhances the period of the work-related disability. You can apply for SIEF relief by writing to the WSIB Case Manager and outlining the pre-existing condition(s). The WSIB may grant relief based on the supporting information in the claim file. The amount of relief granted depends upon the severity of the injured worker's pre-existing condition and the severity of the injury. The amount granted could be between 25% and 100%. SIEF does not apply to Schedule 2 employers.

Cost transfers allow employers in Schedule 1 to apply to have the claim costs transferred to another Schedule 1 employer due to negligence on the part of the other Schedule 1 employer or worker. You may apply for a cost transfer by writing to the WSIB's Prevention Services Division.

Third party cost relief allows a Schedule 1 employer to ask the WSIB to recover the accident costs for the employer's injured worker if the

injury is caused by a third party who is neither another Schedule 1 employer nor a Schedule 1 worker. Any money recovered from the third party will be used to offset the accident employer's costs.

Schedule 2 employers can directly sue anyone, other than their own employees, who may have caused the injuries to the Schedule 2 worker. They do not need the WSIB to initiate legal action.

INDEPENDENT OPERATORS

People who work under contracts *for* service and do not employ any workers, are considered IOs. An IO agrees to do specific work in return for payment. The payer does not necessarily control the way in which the work is done, or the times and places it is done.

How do I make sure an IO I hire is not treated as a worker by the WSIB?

You must follow WSIB procedure. If you don't, the WSIB may deem the IO to be your worker, and require that premiums be paid on the labour portion of the contract with the IO.

How does the WSIB determine whether an individual is an IO?

The WSIB has five industry-specific questionnaires (for construction, trucking, taxis, couriers and logging) and a general questionnaire for individuals working in all other industries. These questionnaires are in the Forms section of the WSIB's website at: www.wsib.on.ca. The questionnaires incorporate the principles of an organizational test to help determine whether someone is a worker in an employer's organization, or an IO running his/her own busiress.

Both the principal and the IO must complete and sign the appropriate questionnaire, and submit it to the WSIB. WSIE decision-makers review the questionnaire and any other information that is relevant to the terms and conditions for service, i.e., invoices, contracts, purchase orders, business cards, etc. When all of the criteria considered together indicate the person has a separate business that is not integrated into the employer's business, the WSIB considers that person to be an IO. If, however, the WSIB decides the person does not have a lot of independence in doing the work and that his/her decisions have an insignificant effect on his/her opportunity to earn a profit or suffer a loss, it considers that person to be a worker. The questionnaire is necessary even if the IO is incorporated.

What should I do?

You should fill out and submit a questionnaire if you are planning to hire an IO, *before* the IO does any contract work for you. If the WSIB concludes the person is a worker, you will need to pay premiums to the WSIB for that worker's wages and comply with all other WSIB policies. If the person is an IO, you need to take action to protect yourself and your business from financial risk.

Ask the IO if he/she has purchased optional insurance from the WSIB. If the answer is "yes," get a clearance certificate. A clearance certificate is a document issued by the WSIB confirming the IO is registered with the WSIB and has met all payment and reporting obligations. It waives the WSIB's right to hold the principal responsible for any premiums charged to the IO's WSIB account during the time the clearance certificate is valid. An IO (or his/her dependants) who has WSIB coverage also cannot sue you as a result of a workplace injury, illness or death.

You should get a new clearance certificate every 60 days as they expire after that time. Keep all clearance certificates during the WSIB audit period which is the current year plus two years.

CONTRACTING OUT

Employers who contract with other companies to provide services such as janitorial, electrical, or security will be held responsible for the injury costs of the other company's injured workers for the duration of the contract if the other company is unregistered or in default with the WSIB.

The WSIB may also hold you responsible for any unpaid premiums owed by the contractor on wages paid to his/her workers during the duration of the contract. You may deduct from money payable to the contractor the amount for which the contractor is liable.

The only way to ensure this will not occur is to require a clearance certificate from contractors.

ACCIDENTS AND OCCUPATIONAL DISEASES

As an employer, it is not only in your best interest to maintain a healthy and safe workplace and to prevent workplace injuries and occupational diseases, it is also your legal obligation under the OHSA.

What is an "accident"?

According to the WSIA, accidents include:

- a chance event caused by a physical or natural incident, i.e., falling off a ladder or frostbite
- a disablement (a condition that has emerged gradually), i.e., carpal tunnel syndrome, and
- a wilful and intentional act, but not an act of the worker, i.e., being assaulted by a co-worker.

What is an "occupational disease"?

Occupational disease includes:

- a disease resulting from exposure to a substance that is related to a particular industrial process, trade or occupation, i.e., developing asthma from working in a bakery
- a disease peculiar to, or characteristic of, a particular industrial process, trade or occupation, i.e., the development of lead toxicity is not a disease, but is a precursor that can lead to severe damage of the central nervous system and is compensable prior to developing the disease
- a medical condition that, in the WSIB's opinion, requires a worker to be removed either temporarily or permanently from exposure to a substance because the condition may be a precursor to an occupational disease
- a disease mentioned in Schedule 3 or 4 of O. Reg. 175/98, or
- a disease listed in the WSIA, applicable to firefighters and fire investigators.

A worker who suffers from, and is impaired by, an occupational disease resulting from workplace exposures at one or more jobs he/she has had is entitled to receive benefits under the WSIA as if the illness/disease were a personal injury by accident.

When do I need to report an accident or an occupational disease?

Employers must report accidents or occupational diseases to the WSIB by completing the "Employer's Report of Injury/Disease" Form 0007A (Form 7) when an injury or illness causes a worker to:

- obtain health care
- be absent from his or her regular work beyond the date of accident
- require modified duties at less than regular pay
- earn less than regular pay at regular work or
- require modified work at regular pay for more than seven calendar days.

How do I determine the date of accident for a disablement claim?

WSIB Operational Policy Manual (OPM) Doc. No. 11-01-04, "Determining the Date of Injury," clarifies the difference between "date of injury" and "date of accident" and resolves the conflict in cases where a worker alleges the date of injury is the date the worker became disabled from doing work. The policy says that in a gradual onset disablement claim, the date of injury is the earlier of: (1) the date medical attention is first sought which led to the diagnosis, or (2) the date of diagnosis. This impacts the employer's obligation to re-employ the injured worker and to contribute towards the worker's employment benefits. It applies to all decisions made on or after January 1, 2009 for all injuries on or after January 1, 2009.

What steps should I take if an accident happens?

Administer first aid immediately. Immediately arrange and pay for transportation to a medical clinic, a health care practitioner, a hospital or the worker's home, if required. Have someone accompany the injured worker on your behalf, if necessary.

Provide the worker with a copy of the "Functional Abilities Form for Planning Early and Safe Return to Work" Form 2647A (FA form) for the treating health care practitioner to complete and return.

Investigate the accident immediately after first aid/health care treatment has been provided to the worker. Depending on the severity of the accident, obtain a signed statement from the injured worker as soon as possible. If a signed statement is not possible, obtain a statement by phone. Interview everyone who may have seen the accident and get witness statements. Ensure the witness reads and clearly understands the statement, and have the witness sign and date the statement. If statements are provided in another language, identify the interpreter and the language in which the statement was provided. Have a third person witness the interview (a union representative, where applicable). Get written statements from any worker who was in view of the accident, but did not see anything.

Visit the site of the accident to prepare drawings of the layout of the area and to take photographs of any equipment and materials involved. Do not clean up or re-arrange the site until after the investigation has been completed.

The employer must report the accident to the WSIB by completing a Form 7 within three calendar days of learning of the accident, and the WSIB must receive it within seven business days from when the employer learns about the accident. Section 12 in Block C of the Form 7 says, "If you have concerns about this claim, attach a written submission to this form." If you do have concerns about a particular claim, check the box in section 12 that says "submission attached" and either include your concerns on page 4 of the Form 7 or attach a separate sheet that explains your concerns about the worker's claim for benefits. You can also provide additional information such as copies of statements, drawings, photographs, etc. This will require the Eligibility Adjudicator to contact you to discuss the issues, before a decision is made. If that does not happen, you should contact the Eligibility Manager. Give the injured worker a copy of the Form 7 and any attachments provided to the WSIB. If the Form 7 is incomplete, late, or if a copy is not given to the injured worker, the WSIB may levy a penalty of $250 for each infraction. The Form 7 is available on the WSIB's website at: www.wsib.on.ca and can be completed and filed on line.

The worker must complete, sign and submit the "Worker's Report of Injury/Disease" Form 0006A (Form 6) to the WSIB in order to claim WSIB benefits and consent to the release of functional abilities information to the WSIB and the employer. If the worker does not file a claim for benefits or consent to the disclosure of functional abilities information within the six-month deadline, the WSIB will not provide benefits. The functional abilities information will help the workplace parties develop an appropriate early and safe return to work plan for the injured worker. Workers are required by law to give employers access to this information.

The worker must provide the employer with a copy of the completed Form 6 and any attachments at the same time this information is provided to the WSIB. If the worker is making a claim for an occupational disease, the worker must provide a copy of the Form 6 to the employer who most recently employed him/her in the job to which the disease is associated. The employer must pay the injured worker's wages for the day of the accident.

You must also maintain your contributions to the injured worker's employment benefits (i.e., health insurance, life insurance and pension plan contributions) for one year from the date of accident

while the injured worker is off work. These contributions must be maintained provided the injured worker continues to pay his/her share of the contributions. This obligation does not apply to employers participating in multi-employer benefit plans.

Return the worker to work. Refer to the "Return to Work" section of this guide for general advice or call the OEA for any specific questions or concerns you may have about a particular claim.

Do I need to contact anyone else about a serious workplace injury or illness?

The OHSA requires the employer to notify certain people when serious workplace injuries or illnesses happen.

If anyone has been critically injured or killed at the workplace, even if they are not a worker, you must directly contact an inspector at the closest MOL office immediately, as well as the joint health and safety committee or health and safety representative and the union if there is one. You must also send written notification to an MOL director, within 48 hours, explaining what happened and providing any information that might be required.

If an accident, explosion or fire causes a worker to be disabled or to require medical attention, you must provide written notification to the joint health and safety committee or health and safety representative and the union, if there is one, within four days. If required by an inspector, you must also give this notice to an MOL director.

If you are told that a current or former worker has an occupational illness or that a claim for an occupational illness has been filed with the WSIB, you must provide written notification to an MOL director, the joint health and safety committee or health and safety representative and the union, if there is one, within four days.

Even in cases where no one is hurt, the owner of a mine or mining plant must provide written notice of an accident or an unexpected event that *could have* caused an injury at the workplace to an MOL director, the joint health and safety committee or health and safety representatives and the union, if there is one, within two days.

How does the WSIB make decisions on occupational disease claims?

O. Reg. 175/98 includes Schedules 3 and 4 which list the specific diseases for which there is a presumption of entitlement. The employer *cannot* rebut the presumption of the four diseases listed in

Schedule 4 if the conditions in columns one and two of the chart are met. However, the employer *can* rebut the presumption for the 30 diseases listed in Schedule 3 if it is established that non-work-related factors are so influential that it is "more likely than not" that the worker's employment was *not* a significant contributing factor in the development of his/her disease.

The WSIB also has policy guidelines for several specific diseases including:

- asbestosis
- noise-induced hearing loss
- tinnitus
- occupational aluminum exposure, dementia, Alzheimer's disease and other neurologic effects
- tuberculosis
- scleroderma and
- post-exposure prophylaxis for occupational exposure to HIV.

Many occupational disease claims, however, are not covered by the schedules or the policies and in those cases, entitlement is based on the merits and justice of the case. To try to establish consistency in this process, the WSIB is currently using a protocol guide called "A protocol for occupational disease policy development and claims adjudication." This document is available in the Health Care Practitioners' section of the WSIB's web site under "occupational diseases" and then under "Final Report of the Chair of the Occupational Disease Advisory Panel". This protocol explains how WSIB Case Managers apply the legal principles and review and weigh all the evidence when adjudicating occupational disease claims.

The draft protocol outlines the following legal principles related to occupational diseases:

- the causation test — the "significant contribution" test is applied, i.e., the work or work process must have contributed *significantly* to the worker's disease, or was influential or important to the development of the disease
- the burden of proof — in the investigative versus adversarial approach to decision-making it is the responsibility of the Case Manager, rather than the workplace parties, to investigate and obtain the best available evidence to make a decision

- the standard of proof – the balance of probabilities, i.e., it must be *more likely than not* that the worker's employment was a significant contribution to his/her occupational disease
- the benefit of the doubt – if the evidence for or against a *specific issue* is approximately equal in weight, the issue is resolved in favour of the worker and
- the merits and justice of the individual claim – similar claims are adjudicated in a similar manner to make the decision-making process consistent.

The significant contribution test does *not* require the worker's employment to be the sole, primary or predominant cause of the disease. A claim may be approved where *non*-work-related factors contribute *more* to the disease than work-related factors, as long as the contribution of workplace factors in the development of the disease is significant or more than "trifling."

Each claim file and decision letter should identify the case specific and general evidence that was used to make an entitlement decision. This may include occupational hygiene assessments, clinical review assessments, information provided by the Occupational Disease Policy and Research Branch, and prior medical and other non-occupational factors. You should contact the Case Manager to request this information if it is not included in the decision letter.

What could an injured worker get paid, if the claim is allowed?

Workers with injury/illness dates after January 1, 1998 who are absent from work because of their workplace injury/illness will receive LOE benefits equivalent to 85% of their pre-injury net average earnings (NAE). Workers with injury/illness dates prior to January 1, 1998 receive 90% of their NAE. LOE benefits may include both a short-term and a long-term benefit rate depending on how long the worker is off work.

a) How is the short-term benefit rate calculated?

Short-term average earnings include the worker's earnings from the accident employer and all other employment ("concurrent employment") at the time the worker was injured. Short-term average earnings are used to pay LOE benefits for the first 12 weeks after the injury. Some of the types of earnings included in the calculation of regular short-term earnings are:

- the base rate of pay with the accident employer (hourly, daily or weekly)
- gratuities and tips included as gross earnings for income tax
- shift differentials
- vacation pay that is calculated as a percentage of the base rate and paid regularly on pay checks
- mandatory overtime
- regular voluntary overtime
- regular production bonuses and commissions and
- room and board if they are part of the worker's pay.

b) How is the long-term benefit rate calculated?

The long-term rate is paid from the start of the 13th week following the injury and is based on the worker's earnings pattern generally 12 months prior to the accident date or less if there was a break in the worker's employment pattern. Again, the rate may vary, based on different factors. Different WSIB policies apply depending on whether the long-term average earnings are based on permanent or non-permanent employment.

OPM Doc. No. 18-02-02, "Determining Short-term Average Earnings" includes a table outlining the types of earnings that are included in the short-term and long-term earnings basis calculation. For example, earnings from mandatory overtime and earnings from regular voluntary overtime will be included in both the short- and long-term earnings basis calculations, but irregular voluntary overtime will be included in the long-term calculation only – not the short-term one. Employment insurance benefits for layoffs or shortages of work, as well as production bonuses and unused sick pay credits that are paid annually in a lump sum, are not included in the short-term calculation but they are included in the long-term earnings calculation.

Are occupational disease and fatality claims handled differently?

No distinction is made between short-term and long-term average earnings in long-latency occupational disease claims. In all such cases, the average earnings are based on the greater of: (1) the annual earnings of a fully qualified worker in the same trade, occupation, profession or calling at the time of accident or diagnosis; or (2) the worker's annual earnings during the 12 months prior to the accident date. In the case of a fatality, survivor benefits are always based on the worker's long-term average earnings.

Are there other groups of workers to which different rules apply?

There is a separate WSIB policy that outlines the procedure for calculating short- and long-term average earnings for the following groups:

- dependent contractors
- workers who have optional insurance
- apprentices
- learners
- students
- pupils enrolled in a Ministry of Education program
- members of a volunteer force
- emergency workers and
- individuals participating in the Ontario Works program.

How can I manage my worker's claim effectively?

Since the WSIB assumes the worker's short-term and long-term average earnings are the same, it usually does not automatically recalculate average earnings. You may need to ask the Case Manager for a recalculation if the short-term average earnings do not reflect the long-term average earnings.

Either the employer or the worker can request a recalculation of LOE benefits. If a recalculation results in a lower rate, a benefit-related debt is created and the worker may have to pay that amount back to the WSIB.

All benefits are subject to the worker's co-operation. You should contact the decision-maker if you have reason to believe the worker is not fulfilling his/her obligation to cooperate in the early and safe return to work process.

How long does a worker receive loss of earnings benefits?

LOE payments continue until the earliest of one of the following situations occurs:

- the worker no longer suffers a wage loss as a result of the injury or
- the worker is no longer impaired as a result of the injury or
- the worker turns age 65, provided the worker was less than 63 years of age at the time of the injury or

- two years after the date of the injury, if the worker was 63 years old or older on the date of the injury.

The worker may also be entitled to a non-economic loss (NEL) benefit if the workplace injury results in a permanent impairment. The WSIB defines a "permanent impairment" as any permanent physical or functional abnormality or loss resulting from a workplace injury, as well as any psychological damage arising from that abnormality or loss. A worker's degree of permanent impairment is calculated as a percentage of total permanent impairment of the whole person. Schedule 1 employers can apply for SIEF relief if the worker had a prior injury or pre-existing condition that contributed to the worker's permanent impairment.

What types of injury costs are covered by the WSIB?

Once a claim is accepted the WSIB provides the following benefits:

- LOE
- health care
- health care equipment and supplies
- NEL benefits
- labour market re-entry (LMR) services for workers or surviving spouses (to assist in return to work)
- loss of retirement income (LRI)
- future economic loss (FEL) for injuries occurring between 1990 and 1997
- costs covered under the occupational disease and survivor benefit program
- benefits for seriously injured workers and
- compensation for the worker's survivors.

How does the WSIB decide whether a worker is entitled to loss of earnings payments and other services?

The WSIB decides if the claim is work-related. In order for a claim to be considered work-related, all of the following conditions must exist:

- the employer's business activity is covered under the WSIA
- the worker is covered under the WSIA
- there is a personal work-related injury
- there is proof of accident and

- the medical diagnosis is compatible with the accident or disablement history.

Following an injury, the WSIB is generally provided with information related to the injury by the employer, the worker and the treating health care practitioner(s). The WSIB then weighs the evidence and makes a decision based on the merits of the particular claim, ensuring that its decision is consistent with the provisions of the WSIA and WSIB policies. In cases where evidence is approximately equal on both sides of an issue, the WSIB will decide in favour of the worker (or spouse or dependant) who is making the claim. This provision is known as the "benefit of doubt."

RETURN TO WORK

Why would I want to bring an injured worker back to work?

Under the WSIA, employers and workers have an obligation to co-operate in early and safe return to work. The employer and worker are required to:

- contact each other as soon as possible after the injury occurs and maintain communication throughout the period of the worker's recovery and impairment
- attempt to identify and provide suitable employment (see below) that is safe, available and consistent with the worker's functional abilities and that, where possible, restores the worker's pre-injury earnings, and
- give the WSIB any information it may request concerning the worker's return to work.

a) What is "suitable" work?

Suitable work is work that:

- the worker is medically able to perform, according to his/her functional abilities
- the worker has, or is able to acquire, the necessary skills to perform
- does not present a health or safety risk either to the worker or to his/her coworkers and
- restores the worker's pre-injury earnings, if possible.

Some of the things you need to think about when trying to identify suitable employment include:

- functional abilities information
- modified duties
- alternative duties and
- where the worker lives.

It is helpful to speak with the injured worker when preparing an offer of suitable work to match the worker's functional abilities to duties that are available in your workplace. You should document all of the options you have considered. If, after having considered all of the options, you do not think you can offer the worker suitable work, you should contact the WSIB decision-maker immediately to discuss what steps you need to take and what kind of support the WSIB can provide.

b) What is "available" work?

Available work is work that exists with the accident employer at either the pre-injury worksite or at a comparable worksite arranged by the employer. In determining whether available work has been offered to the worker, the WSIB considers whether:

- travel or assignment to different worksites is a normal practice
- travel or assignment to a different worksite other than the injury site is included in the employment contract
- the worker normally accepts employment assignments in various geographic areas and
- travelling to the proposed job falls within the normal parameters of travel expected of a worker.

What should I do if the worker is not cooperating?

If you do not believe the worker is fulfilling his/her obligation to cooperate in early and safe return to work, you must contact the WSIB Case Manager as soon as possible. The Case Manager may send a Return to Work Specialist (RTWS) to the workplace to help the employer and worker come to a resolution. If the worker has breached his/her obligation, the WSIB may reduce, suspend or stop the worker's benefits.

What advantages are there in bringing an injured worker back to work?

You benefit by reducing your injury costs, keeping your trained workers and improving morale and employee relations in your workplace.

Injured workers benefit by often recovering more quickly when they return to work that is safe, worthwhile and restorative at the earliest opportunity.

How do I bring an injured worker back to work?

Be proactive and establish a return to work program *before* injuries occur. You should:

- determine your needs according to the size of your company, the nature of your business and the number of claims you handle
- set clear expectations and procedures
- ensure commitment by all parties (senior management, workers, supervisors, claims personnel and union representatives)
- educate all employees by making them aware of your return to work program
- ensure all workers understand their duty to co-operate in return to work as outlined in the legislation, and their role in the return to work process
- get feedback on your return to work program by surveying workers, supervisors and union representatives and
- evaluate the success of your program.

Maintain contact with the injured worker in order to:

- ensure the injured worker knows about your return to work program and his/her legislated duty to co-operate
- reassure the worker and find out how he/she is recovering
- determine whether the worker is capable of returning to regular or modified work
- receive the worker's help in identifying opportunities for return to work and
- ensure the worker continues to remain part of the workplace by inviting the worker to staff meetings and social functions and keeping the worker up-to-date on changes and activities in the workplace.

If the worker is capable of returning to modified work, develop and offer a return to work plan using information from the worker's FA form. The offer should be in writing and should include:

- a description of the job
- the physical demands of the job
- the start date and completion date of the plan
- the hours of work required for the job and
- the wages payable for the job.

Send a copy of the offer to the WSIB. Contact the WSIB regularly (every one to two weeks) to update the WSIB on your return to work efforts and to ensure you are kept up-to-date on the worker's claim.

What should I do when the injured worker is back to work?

Remember that you want to encourage and help the injured worker to recover from the injury and to return to the pre-injury job as quickly as possible upon returning to work. You should consider meeting with the worker on the job. Ask the worker how he/she is handling the current job duties, and document all of the worker's comments and concerns.

When necessary, modify the work and/or the workplace to accommodate the needs of the injured worker. You have a duty to accommodate under the Ontario *Human Rights Code* and under the WSIA if you have a re-employment obligation. Adjust your return to work plan as needed. Return the worker to the pre-injury job if he/she is ready to return to regular duties sooner than expected. If the worker finds the work too challenging, you may need to remove certain duties or prolong the duration of the modified job. Establish new target dates if the change in job duties is extended.

Complete an "Employer's Subsequent Statement" Form 0009C to let the WSIB know the worker has returned to work. Update the WSIB about the worker's progress on a regular basis, including a change in hours, a change in pay and a return to his/her regular job.

RE-EMPLOYMENT FOR NON-CONSTRUCTION EMPLOYERS

Do I have an obligation to re-employ an injured worker?

You have an obligation to re-employ your injured worker when all of the following conditions are met:

- you regularly employ twenty or more workers
- the worker has worked for you continuously for at least one year and
- the worker is unable to work as a result of the work-related injury.

The re-employment obligation starts when the employer receives notice that the worker is medically able to perform either the essential duties of his/her pre-injury job or suitable work. Notice respecting a worker's level of fitness to return to work may be provided to the employer by the worker, the worker's treating health care professional and/or the WSIB. Notice of fitness to return to work includes use of the WSIB's FA Form, personal notice, by telephone or by fax, and is effective on the date it is received by the employer. Notice provided by regular mail is effective seven calendar days from the date the notice was sent.

What types of situations may I experience in re-employing a worker?

If the employer and the worker disagree about the worker's ability to return to work, the WSIB will determine whether the worker is medically able to perform the essential duties of his/her pre-injury job or to perform suitable work.

When the worker is able to perform the essential duties of the pre-injury job, your obligation is to offer the worker either the pre-injury job or a comparable job. The "essential duties" of the pre-injury job are all of the duties necessary to produce, at the normal level of productivity, the final product or service required. A "comparable" job would be similar in nature and have the same earnings as the worker's pre-injury job.

When the worker is able to perform suitable work, as defined above, your obligation is to offer the worker the first opportunity to accept suitable work when it becomes available.

A new job does not have to be created for suitable work, but as soon as one is available, the worker must be given the first opportunity to accept it. If you offer the worker suitable employment and another suitable job that is more comparable in nature and earnings to the worker's pre-injury job becomes available, you must offer the more comparable job to the worker because the requirement to offer suitable employment is ongoing during the period of the re-employment obligation.

How long does my re-employment obligation last?

Your obligation lasts until the earliest of:

- two years after the date of the injury
- one year after you receive notice from the WSIB that the worker is medically able to return to the essential duties of the pre-injury job or
- the worker turns 65.

What happens if I terminate the injured worker during my obligation period?

If you terminate or lay off an injured worker within six months of re-employing the worker, the WSIB will presume you breached your re-employment obligation and impose a re-employment penalty.

The employer can rebut the presumption by proving the termination was not related to the injury. Before terminating or laying off an injured worker, check with the OEA for advice. If you terminate after six months of re-employment but within the duration period a breach is not presumed. You may still be found in breach of your obligation if the facts support it.

What happens if I breach my duty to re-employ?

If you are found in breach of your re-employment obligation, the WSIB will:

- levy a penalty against the employer that is equal to up to one year of the worker's NAE for the year before the injury, even if it exceeds the WSIB's maximum insurable earnings ceiling of $77,600 in 2010, and
- provide the worker with re-employment payments, which are equal to LOE benefits (85% of the worker's

NAE), for up to one year or until the end of the re-employment obligation, whichever comes first.

If you are not successful in re-employing an injured worker but the WSIB is satisfied with your attempt to do so, the WSIB may not penalize you.

Do different rules apply to unionized and non-unionized workers?

In unionized environments, the collective agreement prevails over an employer's re-employment obligations under the WSIA if the collective agreement affords the worker greater re-employment protection. The WSIA also acknowledges the seniority provision of collective agreements.

LABOUR MARKET RE-ENTRY

What happens to the injured worker if I can't bring the worker back to work?

An injured worker will be provided with an LMR assessment if any of the following conditions are met:

- it is unlikely the worker will be re-employed by his/her employer because of the nature of the injury
- the worker's employer has been unable to arrange suitable work for the worker that restores the worker's pre-injury earnings or
- the worker's employer is not co-operating in the return to work process.

What is LMR and how does it work?

LMR assistance is offered to injured workers to ensure they have the skills, abilities and knowledge to re-enter the labour market in jobs that are consistent with their functional abilities and that reduce or eliminate any loss of earnings resulting from the injury.

An LMR assessment consists of tests to determine if the worker has the skills, abilities and knowledge to re-enter the labour market in the suitable employment. If the worker does not have the appropriate skills, abilities and knowledge, a labour market re-entry plan (LMRP) is developed. This usually involves training that will allow the worker to re-enter the labour market. An LMRP is not provided if the worker

already has the skills, abilities and knowledge to re-enter the labour market.

You should take an active part in ensuring the WSIB's LMRP is realistic and appropriate and monitor the LMR costs to ensure they are reasonable. Remind the Case Manager that you want to be consulted throughout the LMR process.

APPEALS

Who has the right to appeal a WSIB decision?

Anyone affected by a WSIB decision can object to the decision, if they believe it is unfair or unreasonable based on the facts of the case, including:

- an employer who disagrees with a decision regarding entitlement, health care, premiums, penalties, experience rating adjustments, SIEF relief, re-employment, return to work decisions and LMR decisions, or any other aspect of a WSIB claim, and
- a worker, or spouse or dependant of a deceased worker, whose claim has been denied or who disagrees with a decision regarding benefits.

Are there different levels of appeal?

There are three levels of appeal.

1. WSIB Operating Level

Decisions from the operating level are generated by WSIB decision-makers and include Primary Adjudicators, Eligibility Adjudicators, Short Term Case Managers, Long Term Case Managers, SIEF Case Managers, Nurse Consultants, Account Specialists, Account Analysts, Disability Prevention Specialists (DPSs) and others. You may file an objection if you disagree with a decision. If the decision is not changed, you may file a formal appeal with the WSIB's Appeals Branch.

2. WSIB Appeals Branch

The objection is referred from the operating level to the Appeals Branch and is assigned to an Appeals Resolution Officer (ARO) who makes a decision on the appeal. If you disagree with the ARO's decision, you may file an appeal with the WSIAT.

3. WSIAT

The final level of appeal is conducted by the WSIAT, which is independent of the WSIB.

The OEA may be able to represent you at any or all levels of appeal.

Are there time limits to appeal a WSIB decision?

There are strict time limits for appealing all WSIB decisions. You have 30 days from the decision date to appeal return to work, re-employment or labour market re-entry decisions, and six months from the decision date to appeal any other decision to an ARO.

Although the WSIB's appeal guidelines generally allow an appeal to be filed within one year of the decision, employers should continue their best efforts to file an appeal within the stated time limits. If the appeal period is missed, file your appeal as soon as possible. Employers who encounter problems with appeal periods should contact the OEA for assistance. For more information, refer to "Appendix A" of the WSIB's "Appeal System Practice & Procedures" document on the WSIB's website at: www.wsib.on.ca.

ARO decisions must be appealed within six months of the decision date to the WSIAT.

How do I appeal a WSIB decision?

Write to the WSIB to indicate your disagreement with the decision and include any new information that may warrant changing the decision. The decision-maker will review the concerns raised and may reconsider his/her decision.

If the decision is unchanged, a copy of the claim file will be sent to you, along with an Objection Form that must be completed and returned to the WSIB to proceed with the objection. The worker's claim file will be provided in two sections – health care and non-health care.

How are appeals handled at the WSIB's Appeals Branch?

All cases that arrive at the Appeals Branch are dealt with by Appeals Resolution Officers (AROs). There are two different methods used to resolve appeals, depending on the complexity of the issue(s) in dispute.

1. 60-day Decision Option

This method is used when the issue is relatively straightforward. The objecting party or his/her representative may choose to have a decision made within 60 days based on the information on file and any additional information that is provided in writing by the parties. The onus is on the objecting party to gather any relevant new information.

2. Review / Enquiry / Hearing option

Most appeals at the Appeals Branch are resolved through written submissions or in-person hearings. If the 60-day decision option is declined, the ARO will contact both parties to confirm the issues and determine the most appropriate way in which to resolve the appeal.

If the parties agree the issue(s) can be resolved through written submissions, the parties are given 21 days to make their submissions. After the ARO has received the parties' submissions, the case proceeds to the Resolution Stage for a final decision.

However, if one or both parties decide they would like to provide further evidence, the case proceeds from the Review Stage to the Enquiry Stage. The case moves to the Resolution Stage for a final decision after the ARO receives the additional evidence and submissions.

Cases that involve complex factual questions and issues of credibility will generally be decided by an in-person hearing, and therefore will move from the Review Stage to the Scheduling and Hearing Stages before a decision is made.

What happens if a worker appeals a WSIB decision?

If a worker appeals a WSIB decision, the WSIB will send you a Participant Form that must be completed and returned to the WSIB if you wish to participate in the appeal process. If you have any concerns regarding the appeal you should either note them on the Participant Form or attach a letter. If you do not return the form to the WSIB, you will not be contacted again until after the final decision has been made.

Can someone help me appeal a decision?

The OEA provides representation at both the WSIB and the WSIAT, primarily to employers who have fewer than 100 employees.

Employers of all sizes can call the OEA's Advice Centre any time to discuss concerns they have with one or more workplace safety and insurance issues. Many employers appreciate having an experienced person to talk to about concerns they have regarding a particular revenue issue or claim file. This includes thoughts about the possibility of appealing one or more decisions, and approaches the employer may wish to take when presenting its position in the appeal process.

NEW SERVICE DELIVERY MODEL

The WSIB recently restructured the way it handles claims to try to reduce the "duration" of claims (the length of time a worker is off work due to a workplace injury or illness). As a result, the titles, roles and responsibilities of frontline staff have changed.

The WSIB now uses a case management approach based on discussions with the workplace parties. WSIB decision-makers are expected to provide decision letters in all cases to the workplace parties that *explain* their reasoning. The decision-maker's Manager is the employer's point of contact if issues cannot be resolved with frontline staff.

Registration Clerks

Forms 6, 7 and 8 continue to be received by the Central Claims Processing department. Registration Clerks set up the claims. If a Form 8 is received prior to a Form 7, the Registration Clerk will call the employer with the claim number and ask if he/she is aware of the accident. Always include the claim number on all documents you send to the WSIB, if you know what it is.

Primary Adjudicators

Primary Adjudicators determine eligibility on claims that meet the WSIB's five-point check system (there is a worker, employer, proof of accident, personal injury and compatibility) and are likely to be allowed. This covers approximately 70-80% of all claims registered with the WSIB, most of which are no-lost-time claims.

Eligibility Adjudicators

Eligibility Adjudicators make initial entitlement decisions on more complex claims. Claims will also be referred from Primary Adjudicators to Eligibility Adjudicators in cases where the Form 7 is received before the Form 8.

When a case is pending and there are obstacles in the return to work process, the Eligibility Adjudicator can consult the Short Term Case Manager who can make a referral to a RTWS, etc. This could happen as early as Day 1 of the claim.

Initial entitlement decisions that are made based on the information available at the time remain the responsibility of the Eligibility Adjudicator. This includes all decisions rendered by a Primary Adjudicator. Eligibility Adjudicators have access to a Nurse Consultant who can obtain outstanding information in a claim file to help with the decision-making process. There are no longer investigators staffed in the WSIB's regional offices, but there are still some investigators at the WSIB's Head Office in Toronto. If need be, an investigator can be sent out to do an investigation elsewhere in the province.

If the Form 7 says modified work is available and the claim is allowed, it is transferred to a Short Term Case Manager to address the return to work issues. No-lost-time claims where the worker is doing modified work are also referred to the Short Term Case Manager so the recovery process and return to pre-injury work can be monitored.

If one of the workplace parties raises a concern about the Eligibility Adjudicator's initial entitlement decision, the Case Manager sends the claim back to the Eligibility Adjudicator for reconsideration. The Eligibility Adjudicator will then need to either get more information or provide a more comprehensive explanation of his/her original decision. If an Eligibility Adjudicator reconsiders and reverses the initial entitlement decision, all services to the injured worker will stop. If the Eligibility Adjudicator reconsiders a decision and a party wants to appeal it, the claim is referred to the WSIB's Appeals Branch.

The Eligibility Area is expected to provide the workplace parties with good, informed decisions in a timely manner. Employers who have concerns with respect to specific cases should contact the appropriate Eligibility Manager.

Case Managers

1. Short Term Case Manager

All cases will be transferred from the Eligibility Adjudicator to the Short Term Case Manager *no later than 30 days* after the claim has been registered at the WSIB. Cases may be referred to a Short Term Case Manager as early as the first day of the claim if it is recognized that help is needed to manage the return to work issues, although ownership of the case will remain with the Eligibility Adjudicator. If an

employer has not offered modified work, the Short Term Case Manager will contact the employer and make a referral to a RTWS who will meet with the worker and employer on the employer's premises to facilitate the return to work process.

The Short Term Case Manager refers requests for reconsideration on eligibility issues back to the Eligibility Adjudicator, but makes decisions on entitlement for recurrences. He/she is responsible for determining ongoing benefits and for making decisions on entitlement based on new information.

2. Long Term Case Manager

All cases will be transferred from the Short Term Case Manager to the Long Term Case Manager *no later than* 180 days after the claim has been registered with the WSIB. If, for example, the Short Term Case Manager decides following an investigation by the DPS that the worker cannot return to work with the accident employer, the worker will be transferred to the Long Term Case Manager.

Only the Long Term Case Manager can make decisions regarding LMR.

Long Term Case Managers also determine whether the worker has experienced a permanent impairment and needs to be referred for a non-economic loss (NEL) assessment.

SIEF Case Managers

The WSIB has a central SIEF adjudication team. Employers should request SIEF relief from the Short Term Case Manager or Long Term Case Manager who will refer that one issue in the claim file to the SIEF adjudication team. The SIEF Case Manager, who is also the person to whom a request for reconsideration should be directed, will sign SIEF decision letters. Employers can contact the Short Term Case Manager or Long Term Case Manager to obtain the contact information for the SIEF adjudicator assigned to a particular file.

SIEF AROs

The WSIB's Appeals Branch has designated SIEF AROs. They are the only individuals on the ARO teams who are authorized to address SIEF appeals, and any appeal that includes a SIEF issue is to be assigned to one of them.

Nurse Consultants

They make decisions on health care entitlement, resolve objections to health care entitlement decisions, and intervene in return to work obstacles.

Medical Consultants

Decision-makers will no longer rely on getting a medical opinion in every case. WSIB physicians are now engaged in the return to work process by contacting the injured worker's doctor and clarifying perceived return to work obstacles as the parties work towards a resolution.

Return to Work Specialists

There are approximately 70 RTWSs. They facilitate discussions between the workplace parties to resolve issues such as non-cooperation, re-employment and where there is more than 12 weeks of lost time. They may be involved before a claim is 12 weeks old. The RTWS will ideally stay with the same worker throughout the life of the claim, even if he/she moves from the responsibility of a Short Term Case Manager to a Long Term Case Manager.

The Case Manager provides the RTWS with background information specific to the case, prior to the initial meeting with the employer and the worker, so the meeting with the workplace parties will be more effective.

If an LMR assessment is done, the RTWS takes the LMR report from the LMR service provider to the employer to discuss the plan and associated costs, etc.

RTWSs no longer do formal mediations, but act as facilitators. Discussions with the workplace parties are not confidential and can be recorded in the claim file. Employers are entitled to have a representative attend these meetings with them. Employers may wish to contact the OEA for advice and possible assistance in such cases.

Disability Prevention Specialists

The role of a DPS is to:

- influence and actively support employers in becoming self-sufficient and compliant in the development and implementation of prevention and return to work programs

- focus on injury prevention and improving return to work outcomes by sharing best practice approaches and working with employers to establish new or improved prevention, disability management and return to work programs
- raise awareness, identify needs and motivate employers to take action
- provide direct services to employers within the DPS's area of expertise and/or connect employers to other WSIB services or Health and Safety Associations (HSAs) and
- follow up with employers to ensure action items and timelines are met.

Employers are selected for a visit by one of the 53 DPSs based on:

- a target list generated by the WSIB's Intelligence and Innovation Branch
- a referral made by a RTWS where the RTWS has identified a RTW gap
- from a service delivery team member (i.e. Case Manager, Nurse Consultant, etc.) where he/she has identified a health and safety gap
- an HSA working with an employer identifying a return to work gap or
- an employer scoring 50% or less on s. 12 of the Workwell audit.

If an employer refuses help from the DPS, the DPS will discuss options and potential consequences with the employer, consult with a Disability Prevention Branch Manager and may escalate the case to Workwell or the MOL.

Employer Services Centre

The Employer Services Centre deals with all revenue issues. **Account Analysts** focus on the transaction work such as balance enquiries and address changes. **Account Specialists** are the key decision-makers on all revenue issues including premiums, reconciliations, etc.

Employers can call the WSIB's General Enquiry Number at 416-344-1000 or 1-800-387-0080, provide their account number and be referred to an Account Specialist who will address their account issues.

GLOSSARY OF TERMS USED IN THE WORKPLACE SAFETY AND INSURANCE SYSTEM

This list includes some of the abbreviations you might hear mentioned in the workers' compensation system, and may see written in WSIB case files. As the substantive provisions of legislation pertaining to a particular case depend on the date of injury or illness, this list includes terminology associated with any of the four Acts that may continue to apply to a workers' compensation claim:

- *The Workplace Safety and Insurance Act, 1997* (covering accidents and illnesses that occurred on or after January 1, 1998)
- the pre-1997 *Workers' Compensation Act* (covering accidents and illnesses that occurred between January 2, 1990 and December 31, 1997)
- the pre-1989 *Workers' Compensation Act* (covering accidents and illnesses that occurred between April 1, 1985 and January 1, 1990, as well as deaths during this same period regardless of the date of the accident) and
- the pre-1985 *Workers' Compensation Act* (covering accidents and illnesses that occurred prior to April 1, 1985).

AA	Appeals Adjudicator
AB	Appeals Branch (WSIB)
ACOCD	Advisory Committee on Occupational Chest Diseases
Act (the)	any of the above-mentioned Acts, but currently *The Workplace Safety and Insurance Act, 1997*
AD	accident date
ADJ	adjustment
ADL	activities of daily living
ADR	Alternative Dispute Resolution
AE	accident employer
AMA	American Medical Association
AO	Area Office, i.e., Ottawa Area Office
A/P	after payment
ARO	Appeals Resolution Officer (Appeals Branch, WSIB)
BP	blood pressure

CA	Claims Adjudicator (now Case Manager)
CAD-7	Council Amendment to Draft #7 (experience rating program for the construction industry)
CAM	complimentary and alternative medicine / integrative medicine
CAT scan	computerized axial tomography scan
CC	clearance certificate
CCU	Complex Claims Unit; Diseases / Injuries
CCU-D	Complex Claims Unit; Diseases / Injuries
CCU-I	Complex Claims Unit; Diseases / Injuries
CD	case description
CL	closed file or claim status
CLT	claimant
CM	Case Manager, Short Term OR Long Term (formerly Claims Adjudicator)
CNS	central nervous system
C/O	complain(s) / (ed) / (ing) of
COLD	Chronic Obstructive Lung Disease
COMP	compensation
COPD	Chronic Obstructive Pulmonary Disease
CPD	Chronic Pain Disability
CPI	Consumer Price Index
CPP	Canada Pension Plan
CR	case record
CRA	Canada Revenue Agency
CRB	Claims Review Branch
CSA	Canadian Standards Association
CT scan	computerized axial tomography scan
CU	classification unit
CW	caseworker (vocational rehabilitation)
DOA	date of accident
DPB	Disability Prevention Branch (WSIB)
DPB Manager	Disability Prevention Branch Manager
DPS	Disability Prevention Specialist
DRB	Decision Review Branch (formerly the first level of appeal at the Workers' Compensation Board)
DSM	*Diagnostic and Statistical Manual of Mental Disorders*
DSM-III-R	*Diagnostic and Statistical Manual of Mental Disorders (3rd ed., revised)*

Dx	diagnosis
ECM	Employer Classification Manual (WSIB)
EEG	electroencephalogram
EFD	evidence of financial dependency
EI	employment insurance
EMG	electromyogram
ENT	entitlement
ERF	employer registration form
ESL	English as a Second Language
ESRTW	early and safe return to work
EXT	extend
FA	functional abilities
FAE	functional abilities evaluation
FA form	Functional Abilities Form
FIRM	Field Investigation Referral Memo (Form 630)
Form 6	Worker's Report of Injury/Disease Form 6
Form 7	Employer's Report of Injury/Disease Form 7
Form 8	Health Professional's Report
Form 26	Health Professional's Progress Report
Form 41A	Worker's Progress Report
FPC	Fair Practices Commission
FU	follow up
HAVS	Hand Arm Vibration Syndrome
HIV	Human Immunodeficiency Virus
HO	Hearings Officer
HSA	Health and Safety Association
Hx	history
IAVGO	Industrial Accident Victims Group of Ontario
ICD-9	International Classification of Diseases (9th rev)
IE	injured employee
I & I Branch	Intelligence and Innovation Branch (WSIB)
INT	interest
IO	independent operator
IW	injured worker
IWH	Institute for Work and Health
L	left
LDW	last day worked
LFW	looking for work
LMR	labour market re-entry
LMRA	labour market re-entry assessment
LMRP	labour market re-entry plan
LO	layoff/laid off
LOE	loss of earnings benefit
LRI	loss of retirement income benefit

LT	lost time
LW	light work
MA	medical aid
MAP	Merit Adjusted Premium Program (experience rating program)
MC	Medical Consultant
MMR	maximum medical recovery / rehabilitation
MOL	Ministry of Labour
MR	medical rehabilitation
MSD	musculoskeletal disorder
MTC	medical treatment control
MVA	motor vehicle accident
NAE	net average earnings
NC	Nurse Consultant (formerly Nurse Case Manager)
NCM	Nurse Case Manager (now Nurse Consultant)
NEC	net exemption code
NEER	New Experimental Experience Rating Plan
NEL	non-economic loss benefit
NFA	no further action on claim
NIHL	Noise-Induced Hearing Loss
NLT	no lost time claim
NOC	National Occupational Classification
Non-comp	non-compensable injury / disability not covered by the WSIA
NSDM	New Service Delivery Model (WSIB)
OAS	Old Age Security
OD & SBP	Occupational Diseases and Survivor Benefits Program
ODD	Occupational Disease Division (WSIB)
OEA	Office of the Employer Adviser
OHCOW	Occupational Health Clinic for Ontario Workers
OHSA	*Occupational Health and Safety Act*
OP	overpayment of benefits
OPM	Operational Policy Manual (WSIB)
O/S	outstanding
OT	occupational therapy
OWA	Office of the Worker Adviser
OWS	older worker supplement
PC	personal coverage (insurance) OR prior claims for compensation
PD	permanent disability
PI	permanent impairment
PMT	payment

PPD	permanent partial disability
ppm	parts per million
Prem	premium
PT	physiotherapy
PTSD	Post Traumatic Stress Disorder
Px	prognosis
PYMT	payment
q.i.d.	4 times daily (Latin abbreviation)
QPP	Quebec Pension Plan
quotid	daily (Latin abbreviation)
R	right
RBC	red blood cell count
REC	Regional Evaluation Centre
REO	re-open (a claim)
REO6 (Form)	Worker's Continuity Report
REP	representative
RG	rate group
RHPA	*Regulated Health Professions Act*
RMA	Regional Medical Adviser
RMI	repetitive movement injury
RO	Regional Office
ROM	range of motion
RSI	repetitive strain injury
RTLW	return to light work
RTW	return to work
RTWS	Return to Work Specialist
Rx	prescription
SCIP	Safe Communities Incentive Program
SEB	suitable employment or business
SIEF	Second Injury & Enhancement Fund
SLR	straight leg raising
SMA	Section Medical Advisor
SOB	shortness of breath
SPAD	Strategic Policy and Analysis Division
SRAP	Special Rehabilitation Assistance Program (WSIB)
STEL	short term exposure limit
TDI	Toluene Diisocyanate fume toxicity
TD1	Canada Revenue Agency tax forms
TOJ	training on the job
TP	temporary partial (disability)
TP DIFF	temporary partial difference benefits
TS	temporary supplement
TT	temporary total disability
Tx	treatment
UMA	Unit Medical Advisor

WBC	white blood cell count
WCA	*Workers' Compensation Act* (now the WSIA)
WCAT	Workers' Compensation Appeals Tribunal (now the WSIAT)
WCB	Workers' Compensation Board (now the WSIB)
WFL	within functional limits
WHMIS	Workplace Hazardous Materials Information System
WLM	working level months and radiation exposure
WLS	wage loss supplement
WPP	workplace parties
WSIA	*Workplace Safety and Insurance Act, 1997* (formerly the *Workers' Compensation Act*)
WSIAT	Workplace Safety and Insurance Appeals Tribunal (formerly WCAT)
WSIB	Workplace Safety and Insurance Board (formerly WCB)

RESOURCES

Office of the Employer Adviser (OEA)
Head Office, 151 Bloor Street West, Suite 704
Toronto, ON M5S 1S4

Advice Centre	Toronto: 416-327-0020 Toll Free: 1-800-387-0774
Fax	Toronto: 416-327-0726
Website	www.employeradviser.ca
E-mail Your Questions	askoea@ontario.ca

Workplace Safety and Insurance Board (WSIB)
200 Front Street West
Toronto, ON M5V 3J1

Main Switchboard and point of entry to the Employer Services Centre	Toronto: 416-344-1000 Toll Free: 1-800-387-0750
Central Claims Fax	Toronto: 416-344-4684 Toll Free: 1-888-313-7373
Website	www.wsib.on.ca

Workplace Safety and Insurance Appeals Tribunal (WSIAT)
505 University Avenue, 7th Floor
Toronto, ON M5G 2P2

General Enquiry	Toronto: 416-314-8800 Toll Free: 1-888-618-8846
Fax	Toronto: 416-326-5164
Website	www.wsiat.on.ca

Other Related Telephone Numbers

Occupational Health and Safety Branch, MOL	1- 800-263-8013
Employment Standards Branch	1- 800-531-5551

OEA | Office of the Employer Adviser

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For more information, visit
www.employeradviser.ca
or call 1-800-387-0774.

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